

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|------------------------------|---|----------------------------|
| Micheal Dais, | : | |
| Petitioner | : | Civil Action 2:05-cv---645 |
| v. | : | Judge Frost |
| Ron O'Brien, <i>et al.</i> , | : | Magistrate Judge Abel |
| Respondents | : | |

ORDER

Petitioner Micheal Davis, a prisoner at the Franklin County Jail, FCCC II, Jackson Pike, brings this action for writ of habeas corpus under 28 U.S.C. §2254. This matter is before the Court on Magistrate Judge Abel's June 28, 2005 Report and Recommendation on initial screening under Rule 4, Rules Governing Section 2254 Cases in United States District Courts that the petition be dismissed because Dais has not exhausted his available Ohio court remedies. This matter is before the Court on petitioner's July 13, 2005 objections to Magistrate Judge Abel's June 28, 2005 Report and Recommendation.

The petition alleges that the Franklin County Prosecutor unlawfully caused him to be indicted after twice dismissing criminal complaints charging the same offenses. Petitioner is awaiting trial on the criminal charges. As the Magistrate Judge held, a state prisoner seeking federal habeas corpus relief must first exhaust the remedies available to him in the state courts. 28 U.S.C. §2254(b) and (c); *Picard v. Connor*, 404 U.S. 270, 92 S. Court. 509, 30 L. Ed. 2d 438 (1971). Here petitioner Dais has not presented his federal constitutional claims to the Ohio Court of Appeals and the Supreme Court of Ohio. He must do so before he may seek his release through federal habeas corpus.

Upon *de novo* review in accordance with the provisions of 28 U.S.C. §636(b)(1)(B), the Court **ADOPTS** the Report and Recommendation.

The Clerk of Court is **DIRECTED** to enter **JUDGMENT** for defendant. This action is hereby **DISMISSED**.

/s/ Gregory L. Frost
Gregory L. Frost
United States District Judge